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DLA PIPER LLP (US )  
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EXAMINER
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COBURN, CORBETT B

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DANA CORBO

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Appeal 2017-003192  
Application 14/284,378  
Technology Center 3700

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Before: CHARLES N. GREENHUT, JILL D. HILL and, LISA M. GUIJT,  
*Administrative Patent Judges.*

GREENHUT, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 1–  
16. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

### CLAIMED SUBJECT MATTER

The claims are directed to a method and system for providing real time sports betting information. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for providing sporting event odds and information, for sports books, in substantially real time where the sports books, gamblers and enthusiasts want real time odds and information on the sports books computer, the method comprising:

providing a program that utilizes an Internet connection to provide real time sports bet odds and information for a plurality of sports games from a sport book, said real time sports bet odds and information being downloaded and stored on a user's computer, and wherein said program being incapable of placing bets;

the program displaying real time odds and information including a major line move alert indicating when the sport book change their odds for a bet for a sports game with a user settable period of time; and

navigating said display in order to acquire real time sports bet odds and information using a menu made up of various menus, and for any particular game or bet, the program being capable of visually cycling through the odds.

### REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Corbo	US 7,699,701 B2	Apr. 20, 2010
Corbo	US 8,057,300 B2	Nov. 15, 2011
Corbo	US 8,764,556 B2	July 1, 2014

## REJECTIONS

Claims 1–16 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1–16 are rejected on the ground of nonstatutory double patenting as being unpatentable over the claims of U.S. Patent Numbers 8,764,556, 8,057,300 and 7,699,701.

## OPINION

Because the double-patenting rejection is not argued, it is summarily sustained.<sup>1</sup>

Appellant argues claims 1–16 as a group, for which we select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv). We agree with, and adopt as our own, the Examiner’s analysis under § 101. *See* Ans. 3–10. We add the following discussion only for emphasis.

“The Examiner determines that claim 1 is directed “to the abstract idea of providing odds to potential betters.” Final Act. 2. The Examiner also determines that the additional limitations of claim 1 amount to no more than “(i) mere instructions to implement the idea on a computer, and/or

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<sup>1</sup> *See e.g. In re Berger*, 279 F.3d 975 (Fed. Cir. 2002) (in which the Board affirmed an uncontested rejection of claims under 35 U.S.C. § 112, second paragraph, and on appeal the Federal Circuit affirmed the Board’s decision and found that the appellant had waived his right to contest the indefiniteness rejection by not presenting arguments as to error in the rejection on appeal to the Board). *See also, Hyatt v. Dudas*, 551 F.3d 1307, 1314 (Fed. Cir. 2008) (“the applicant can waive appeal of a ground of rejection”)

(ii) recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry.” Final Act. 2.

Initially, we cannot agree with Appellant that the cited examination guidelines regarding § 101 (App. Br. 5–6) created a de facto rule that the Examiner must identify some case or example in which similar claims were held ineligible under § 101 to support a § 101 rejection. First, rejections at the PTO must necessarily be able to antedate cases in which the particular legal principles involved undergo judicial review. Second, such a requirement would run counter to the principle of not allowing eligibility determinations to hinge on the so-called draftsman’s art. *See Alice Corp. v. CLS Bank Int’l*, 134 S.Ct. 2347, 2358–59(2014) (quoting *Parker v. Flook*, 437 U.S. 584, 593 (1978)). Here, the Examiner followed the *Alice* framework and correctly concluded that claim 1 was directed to ineligible subject matter under § 101.

Appellant next argues the claims do not tie up an abstract idea. App. Br. 6; Reply. Br 5. We cannot agree with the Appellant that claim 1 does not have a preemptive effect, foreclosing basic tools of gambling.

In *Gottschalk v. Benson*, 409 U.S. 63, 93 S. Ct. 253, 68 (1972), the Court, citing *O’Reilly v. Morse* (56 U.S. 62 (1853)), cautioned that a claim “so abstract and sweeping as to cover both known and unknown uses” is not directed to patent-eligible subject matter under 35 U.S.C. § 101. In *Alice* at 2354 , the Supreme Court reaffirmed this principle:

We have long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable. We have interpreted § 101 and its predecessors in light of this exception for more than 150 years.

We have described the concern that drives this exclusionary principle as one of pre-emption. Laws of nature, natural phenomena, and abstract ideas are ‘the basic tools of scientific and technological work. [M]onopolization of those tools through the grant of a patent might tend to impede innovation more than it would tend to promote it, thereby thwarting the primary object of the patent laws. We have repeatedly emphasized this concern that patent law not inhibit further discovery by improperly tying up the future use of these building blocks of human ingenuity.

*Alice Corp. Pty. Ltd. v. CLS Bank Intern.*, 134 S. Ct. at 2354 (quotations and citations omitted).

In arguing that the claims lack a preemptive effect, Appellant quotes the claim language and summarily concludes the claim does not tie up an abstract idea. App. Br. 6; Reply. Br. 5. The claim is comprised of three steps, and the first step involves providing real time sports bet odds and information. The only structures recited are: a program that cannot place bets; an Internet connection; a sports book; and a computer. The only manipulative steps are: providing odds and information; and downloading and storing it on a computer. No specific structures, algorithms, or manipulative steps are set forth in the first step of the claim, only generic structures and actions. The structure in the second step includes the program and the alert. The acts are displaying the odds and information and providing an alert when the odds change with a user settable period of time. Without the “program,” this step could be, and has been, performed in many typically wagering scenarios. All that is required is that the information flows from the odds maker to the gambler. Like the first step, this clause lacks any specific structure or algorithm so as to avoid a preemptive effect.

The third step, navigating the display<sup>2</sup>, again contains generic and well-known components such as “menus” that allow the user to visually inspect the odds. This is insignificant post-solution display with no specific structure or algorithm recited. The claim, read as an ordered sequence and as a whole contains nothing but generic computer recitations such as “a program,” “an Internet connection,” “a user’s computer,” “[a] display” surrounding the basic tools of sports betting: the ability to acquire odds and related information and be alerted to odds changes. *See Alice* at 2358–59 (Generic recitations “cannot transform a patent-ineligible abstract idea into a patent-eligible invention.”). Thus, we cannot agree with Appellant that the claim contains significantly more than an abstract idea. *See App. Br. 7–8*. Rather, claim 1 is an improper attempt to tie up a basic tool of the gambling arts.

We have considered the claims in the cases cited by Appellant (*App. Br. 6–7; Reply. Br. 2–3, 5–6, 8–9*), but do not find the specific language of those claims to be similar to the language of claim 1.

## DECISION

The Examiner’s rejections are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

## AFFIRMED

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<sup>2</sup> Although the claim recites the step of “displaying” there is no antecedent basis for the structure of a “display” specifically.